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AMEND MFG. MILK ACT

Senate Bill 636 as passed by the Senate
First Analysis (6-29-93)

Sponsor: Sen. Joel Gougeon
Senate Committee: Agriculture &
Forestry
House Committee: Agriculture &
Forestry

THE APPARENT PROBLEM:

The Fluid Milk Act (Public Act 233 of 1965) regulates so-called "Grade A" milk, used primarily in various kinds of milk products intended for drinking. The Manufacturing Milk Act (Public Act 222 of 1913) regulates so-called "Grade B" or "manufacturing milk," milk used in processed products such as cheese and dry milk powder. The Fluid Milk Act reflects federal standards (called the "Pasteurized Milk Ordinance") that periodically are updated by the U.S. Public Health Service to correspond with changes in the dairy industry. The United States Department of Agriculture (USDA) also periodically reviews and updates recommended dairy farm and plant standards for "manufacturing grade" (Grade B) milk. The current USDA standards, which date back to 1972, reportedly are going to be replaced later this summer or fall with newer, more stringent standards.

Earlier this session, the legislature amended the Fluid Milk Act (in Public Act 5 of 1993, enrolled Senate Bill 75) to conform to recent changes in and additions to the 1989 Pasteurized Milk Ordinance. Some in the dairy industry have urged legislation to adopt the anticipated changes in standards for manufacturing grade milk that the USDA is expected to issue later this year. However, because these recommended standards apparently involve a cooling process that requires electricity, which Amish farmers in the state are unable to use, legislation has been introduced that would adopt a modified version of the anticipated USDA recommended standards.

THE CONTENT OF THE BILL:

The bill would amend the Manufacturing Milk Act (Public Act 222 of 1913) to bring the act into conformity with most of the anticipated USDA recommended standards for Grade B

("manufacturing milk") milk used in manufacturing milk products (mainly hard cheeses and dry milk). Both dairy farms and milk processing plants would be affected.

In general, the bill would:

- * adopt most of the USDA recommended dairy farm and plant standards, with the exception of temperature and bacteria count standards for manufacturing milk used exclusively for making hard cheese;
- * require an approved water supply on all farms;
- * require all dairy farms to have a milkhouse for the proper cleaning and storage of milking equipment;
- * make minor changes in the producer security requirements as recommended by the dairy industry; and
- * create a "manufactured milk fund" in the treasury department, funded from fines imposed for violations, to enforce the bill.

More specifically, the bill would do the following:

Milk and cream production requirements. The bill would delete current provisions on the production and handling of milk, the prohibition against selling milk from diseased cows, and the sanitation of milking equipment and facilities. Instead, it would require that anyone who offered milk to the public for human consumption get that milk from cows or goats that were located in areas under federal or state supervision for the eradication of tuberculosis and brucellosis. Each animal that produced this milk would have to be kept properly and fed in accordance with Department of Agriculture (MDA) recommendations.

The bill would prohibit the sale or offering for human consumption of milk that was known to be

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infected with mastitis or to have drug residues, pesticides or other chemicals in excess of the maximum permitted under state or federal law. Any such milk would have to be disposed of in a manner directed by the MDA.

The bill would specify lighting, ventilation, construction, size, and use requirements for milking barns or parlors, and would establish size, drainage, and use requirements for cow and goat yards and loafing areas. The bill also would specify construction, lighting, equipment, and design requirements for milkhouses or milkrooms, including the location of bulk tanks. Owners or operators of milkhouses or milkrooms would have to ensure that the facility met the bill's requirements on the cleanliness of the facility, the storage and use of pesticides, the maintenance of milking equipment and utensils, the construction of dairy farm tanks, the storage and use of utensils, and the disposal of waste products. The bill would require that dairy farm water supplies complied with the Safe Drinking Water Act, or, if the water supply were not new or reconstructed after the bill's effective date, the water supply was tested annually by a laboratory approved by the Department of Agriculture and found to be of safe and satisfactory quality, and in compliance with guidelines established by the Department of Public Health.

Milk temperature requirements. The bill would require that milk that was in cans and that would be used exclusively for hard cheese manufacturing be cooled and stored at 60 degrees Fahrenheit or less within two hours after milking, unless the milk were delivered to a processing plant within two hours after milking. Milk that was stored in a dairy farm bulk tank would have to be cooled to 45 degrees Fahrenheit or less within two hours after milking, though after reaching a temperature of 45 degrees or less, the milk could be maintained at a temperature of up to 50 degrees Fahrenheit.

Milk testing. The bill would delete current provisions on milk testing, and require instead that licensed bulk milk haulers, every 45 days, deliver to dairy plants or receiving stations for testing samples of milk they had transported. A dairy plant, receiving station, or MDA-approved laboratory would have to test the milk for the presence of bacteria, drug residue, or an abnormality in accordance with the latest edition of the standard methods for dairy product examination approved by the department. The dairy plant or receiving station

would have to deliver a copy of the test result to the department within 10 days after receiving the test result, and would have to keep an original or copy of the test result for one year. If the result exceeded a test norm approved by the department, the laboratory would have to conduct a somatic cell count of the milk sample, and the results would be the official count for that milk sample.

The bill would keep current requirements for milk processors who are notified that a producer's milk is abnormal or contains bacteria at a level exceeding department limits. The bill would require the department to inspect a milk producer's facility and attempt to determine and remedy the cause of an abnormality or excessive bacteria. The department would have to provide the producer with a written warning notice of intent to suspend a permit, which would have to remain in effect for the period during which two of the four most recent samples collected remained abnormal or contained bacteria at a level exceeding department limits.

If a dairy farm were not shipping milk in accordance with the act on the bill's effective date, the farm could not ship milk for human consumption until the farm notified the department of its intent to become a milk shipper and the department inspected the farm, verified that the farm was in substantial compliance with the act, and issued a permit. The act currently requires an annual inspection of farms shipping milk to a dairy plant or receiving station. The bill would permit the suspension of a permit if adverse conditions continued after a reinspection of a facility.

Bacterial count. The act establishes certain quality standards for raw milk, including that the bacterial estimate not exceed 1 million per milliliter. The bill would reduce that level to 750,000 per milliliter for milk to be used exclusively for making hard cheese and 500,000 per milliliter for all other manufacturing grade milk.

Quality test records. The act provides for the maintenance and review of records of producer quality tests. The bill would revise this provision to permit the department to examine test results and inspect dairy farms as frequently as it determined necessary to assure compliance.

Exclusion of producers. Currently, a producer excluded from selling milk or cream for human consumption must be reinstated after the dairy plant

or receiving station operator or the department determines that the conditions of the farm that caused the noncompliance have been corrected. The bill would delete references to the dairy plant or receiving station operator and require that only the department make the determination.

Manufacturing plants. The act establishes standards and requirements for plants receiving milk for manufacture into butter, cheese, cottage cheese, evaporated milk, condensed milk, dry skimmed milk, and dry whole milk. The bill would revise these provisions to include requirements on a plant's construction and operation, including its heating, cooling, and ventilation; maintenance of coolers and freezers; the storage of materials; maintenance of a laboratory for quality control and analytical testing; the location, construction, and operation of wells in compliance with the Safe Drinking Water Act; the supply of steam; and disposal of wastes from the plant and premises. The bill also would establish for owners or operators of manufacturing plants requirements to ensure the plant's proper use and operation of equipment.

The act establishes requirements for employees of milk manufacturing plants, including prohibiting people with communicable diseases from being employed in these plants. The bill would require employees to follow good hygienic practices; revise the prohibition against using tobacco in a facility's rooms; and specify the outer garments to be worn. Employees with communicable diseases could not enter any room or compartment where milk and milk products were prepared, manufactured, or otherwise handled. Employees with discharging or infected wounds, sores, or lesions on their hands, arms, or other exposed parts of their bodies could not work in any dairy processing rooms or in any capacity resulting in contact with the processing or handling of milk products. Someone returning to work following illness from a communicable disease would have to provide the plant's owner or operator with a certificate from a physician to establish proof of complete recovery. Plants would have to keep on their premises medical certificates attesting to the fact that when last examined, employees who had had a communicable disease were free from that disease.

The bill also would establish operating standards and requirements for licensed bulk milk haulers and milk plant owners or operators, including requiring

owners or operators to keep certain plant records and to send producer quality tests to the department within 10 days of the tests' completion.

In addition, the bill would establish requirements for owners or operators of plants manufacturing, processing, or packaging instant nonfat dry milk, nonfat dry milk, dry whole milk, dry buttermilk, dry whey, or other dry milk products. The department would be required to sample and test, at least once a month, all instant nonfat dry milk offered for sale to the public to assure that the product met the bill's requirements. The bill also would establish requirements for plants manufacturing, processing, and packaging butter and related products.

Processing requirements for milk and cream.

Under the bill, plants that processed milk or cream into a finished product would have to pasteurize the milk or cream at the processing site. The cream for buttermaking would have to be pasteurized using any of the methods specified in the bill, and the department could require additional heat treatment above the bill's minimum pasteurization requirements to ensure improved keeping quality characteristics.

The department could inspect all ingredients used in the manufacture of butter and related products to ensure that each ingredient was wholesome and practically free from impurities. The bill would establish standards for the packaging of butter and related products, require that plants protect supplies of packing materials against possible contamination, and provide for the marking of containers. The bill also would establish standards for the storage, refrigeration, or freezing of these products.

Plants that manufactured or processed cheese would be required to follow facility, equipment, production, and packaging standards established under the bill. The bill also would establish equipment and production standards for plants that manufactured, processed, or packaged evaporated, condensed, or sterilized milk products, and would require that these plants ensure that the equipment and utensils used for processing and packaging these products complied with the standards.

Dairy plant licenses. Currently, a person, firm, partnership, association, cooperative organization, or corporation owning or operating a dairy plant that is not licensed by the department before the plant opens must obtain an annual license for \$50 from

the department. The license must be renewed annually on July 1. Under the bill, plant operators would have to pay within 130 days after the close of their fiscal year a \$50 renewal fee for each plant they operated.

License revocation. Before revoking a license, the department must give the licensee a written notice that includes the time and place of a hearing before the department director. The bill would require that the hearing be conducted in a manner prescribed by the Administrative Procedures Act.

Milk pick up license fee. Currently, someone cannot pick up milk from a farm bulk milk tank without an annual license issued by the department. This license must be renewed annually on July 1. The bill specifies that milk haulers would have to renew their licenses and pay a \$10 fee annually on July 1.

Security arrangements. Under the act, dairy plant licenses must be granted if one of the security arrangements specified in the act is filed with the department director. Under the bill, the department could revoke or deny a license if the licensee or license applicant failed to provide, upon the department's request, one of the specified security devices. One security device under the act is cash, in an amount not to exceed the sum reasonably likely to be due and accrued at any one time for dairy products received by the dairy plant. The bill would revise this provision to include, instead, cash in an amount not to exceed the value of the greatest milk receipts the dairy plant received within a consecutive 30-day period during that dairy plant's most recent fiscal year, or the greatest milk receipts that the dairy plant was anticipated to receive during a 30-day period within the licensing period, whichever was greater.

The act also provides for other security acceptable to the department, except an irrevocable letter of credit. The bill would include an irrevocable letter of credit, less any amount the dairy plant owed the producer. Under the bill, an agreement in which the dairy plant prepaid for its milk supply by providing cash payments before or at delivery time also would qualify as a security device. The bill would delete current provisions on trustee arrangements.

Currently, upon receipt of a license and any time the type of licensing is altered, a dairy plant that

produces manufactured dairy products must notify each producer delivering dairy products to the plant of the financial basis on which the license was issued. Under the bill, this provision also would apply whenever a license was renewed or altered.

The bill would delete the current provision prohibiting a claim for the purchase price of dairy products that was due and payable more than 30 days before the date the first written notice of default is received by the department, or a claim covering a transaction in which the producer has granted to the licensee a voluntary extension of credit.

Violations. The act requires the department director to impose certain civil fines on producers who sell milk that has had a positive reaction to an "antibiotics" test. The bill would delete the term antibiotics and refer, instead, to a "drug residue" test.

The Manufactured Milk Act Fund. The Manufactured Milk Act Fund would be created in the treasury department, and would be administered by the Department of Agriculture. The fund would be capitalized by revenues collected under the act, and additionally could receive any gifts or contributions and money as otherwise provided by law.

Currently, civil fines received by the MDA must be deposited in the state general fund and spent for enforcing the act. The bill would require that these fines be deposited in the Manufactured Milk Act Fund, to be used by the department solely to enforce the bill.

The state treasurer would be required to direct the fund's investment, and credit interest and earnings of the fund to it. Money in the fund at the close of the fiscal year would be kept in the fund and could be returned to the general fund.

Repealer. The bill would repeal provisions on:

- * the title of the act (MCL 288.101a);
- * prohibited use of insanitary milk or cream (MCL 288.103);
- * egg nog standards (MCL 288.103f);
- * cottage cheese standards (MCL 288.103g);
- * prohibition against insanitary premises and utensils (MCL 288.104);
- * container marking (MCL 288.104a);

- * licensed cream buyer qualifications and duties (MCL 288. 107 and 288.108); and
- * the keeping of cream condemnation reports by licensed cream buyers (MCL 288.112).

MCL 288.101 et al.

BACKGROUND INFORMATION:

According to the Department of Agriculture, of the approximately 5,000 licensed commercial dairy farms in the state, all but about 550 produce only Grade A milk (and therefore are regulated under the Fluid Milk Act). Of the 550 dairy farms producing Grade B milk (and, therefore, regulated under the Manufacturing Milk Act), about 300 are Amish. The milk produced by the farms under the Manufacturing Milk Act accounts for approximately five percent of the milk produced in the state, with probably 75 percent of the manufacturing milk produced being processed into hard cheese.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would have no fiscal implications for the state. (6-9-93)

ARGUMENTS:

For:

The bill would put the state's manufacturing milk industry in a more competitive position with other states which have adopted comparable or higher standards than the USDA requirements. Reportedly, 23 states, representing almost 87 percent of the producers, have adopted comparable or higher standards than USDA requirements, while Michigan is one of only four states (including Idaho, Ohio, and Oregon) that has less stringent standards than the USDA requirements. (Maryland and West Virginia reportedly are the only two states without any requirements.)

Quality standards for raw milk, both grade A and manufacturing grade, are being strengthened in many states, while currently the USDA standards for manufacturing grade milk are being upgraded. The strengthening of current quality standards for manufacturing grade raw milk will benefit the dairy processing industry by providing it with a higher quality raw milk product; dairy farmers by requiring them to produce a product of higher value to the

processing industry; the dairy industry by improving profitability in the future (which is necessary to its survival); and the general consuming public, which will be able to buy safe, wholesome products that are produced and processed in accord with the latest technological innovations in the dairy industry. The bill would not raise existing fees. It would keep existing temperature requirements for milk shipped in cans (which will remain at 60 degrees Fahrenheit), but would lower the temperature for all other grade B milk to 50 degrees while also reducing the allowable bacteria count requirement to 750,000 per milliliter (from the current one million per milliliter).

Against:

Reportedly, the USDA will be recommending lowering temperatures for manufacturing grade milk to 50 degrees (instead of the current 60 degrees), reducing the maximum bacterial level for farm manufacturing grade milk to 500,000 per milliliter, and reducing the somatic cell count to 750,000 per milliliter. These more stringent requirements are possible because of improvements in dairy technology, and the state owes it to its dairy industry to move to these requirements to ensure that the industry will be able to remain competitive with that in other states (many of which, reportedly, are moving to these higher, anticipated recommended USDA standards). Lowering the temperature as quickly as possible after milking is a particularly important quality standard in order to provide the milk with a longer shelf life.

Lowering the temperature of milk quickly makes it more likely that the bacteria count of milk will remain lower, and a low bacteria count is one good indicator of milk's sanitary quality. Milk is a perishable food product which must be protected during its production, processing, and marketing. High standards of sanitation are required to prevent contamination, and proper and prompt cooling is required to prevent deterioration. It is widely accepted that the bacterial count of milk is an index of the milk's sanitary quality (although a high count does not necessarily mean that disease organisms are present, and a low count does not necessarily mean that disease organisms are absent). A high bacterial count does mean that the milk either has come from unhealthy cows or has been kept at warm temperatures which permit bacterial growth. This means that the chances of infection have been increased, and that any bacterial contamination which may have reached the milk has been

permitted to increase to more dangerous proportions. In general, then, high bacterial counts mean a greater likelihood of disease transmission.

Milk produced by disease-free cows and under clean conditions usually contains relatively few bacteria immediately after milking. These, however, multiply to enormous numbers in a few hours unless the milk is cooled. When the milk is cooled quickly to 50 degrees or less, however, there is only a slow increase in numbers of bacteria. The likelihood of transmitting disease is much increased when the milk contains large numbers of bacteria, so it is extremely important for milk to be cooled quickly so that small numbers of bacteria which may have entered the milk will not multiply. Unhealthy cows or unhygienic milkers can transmit a number of diseases to humans -- including tuberculosis, brucellosis, Q-fever, salmonellosis, staphylococcal infection, and streptococcal infection -- through milk, so it is crucial that the bacteria count be kept as low as possible, both when the milk comes from the udder and, through quick cooling, immediately after and until it is processed for human consumption.

Response:

Even though the USDA apparently will be suggesting that manufacturing grade milk be lowered immediately after milking to 50 degrees Fahrenheit, because new technologies allow such immediate cooling to such a low temperature, Amish farmers who are prohibited for religious reasons from using electricity cannot achieve this low a temperature (because they mechanically cool their milk to groundwater temperatures, for which 60 degrees is an achievable temperature), nor can they achieve even the 60-degree temperature "immediately" after milking. The bill would recognize the needs of this particular group of dairy farmers. The 60-degree provision should be kept in the bill, particularly in light of the fact that the current 60-degree standard has caused no consumer safety problems in the years since it has been in effect. At the same time, the bill attempts to compromise with the wishes of the larger dairy community by lowering the bacterial standards for canned raw milk to a level lower than that suggested by the USDA.

Just because technology is available to do something is no reason why an entire, if small, segment of the dairy industry should be legislated out of existence, particularly when there are no public health reasons for doing so. In fact, to a segment of the consumer

market, the fact that a product comes from an Amish farm is a selling point, since some people believe, rightly or wrongly, that the organic methods of Amish farmers result in a safer, higher quality product than that produced by a mechanized, chemically-based approach to agriculture. If there is no public health need to lower the temperature of canned raw grade B milk, and if lowering the required temperature would put a small but important segment of the dairy industry out of business, then the bill should not require that lower temperature.

POSITIONS:

The Michigan Department of Agriculture supports the bill. (6-24-93)

A representative from one of the two cheese-processing plants that uses Amish milk testified in support of the bill. (6-23-93)

The Michigan Farm Bureau supports the concept of the bill, but opposes the 60-degree temperature provision for milk intended exclusively for making hard cheese. (6-28-93)